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BIA Streamlining

On August 23, 2002, the Attorney General issued a [Final Rule](#) that restructured the Board of Immigration Appeals (BIA or Board). The rule revised the organization and procedures of the Board to enable it to reduce delays in the administrative review process, eliminate the existing backlog of cases, and focus more attention and resources on those cases presenting significant issues for resolution. The following summarizes the status of this initiative to date.

General

- The restructuring regulation has been successfully implemented and has allowed the Board to allocate its limited resources to adjudicate the more than 40,000 new appeals and other matters filed annually. The regulation was designed to address extensive backlogs and lengthy delays, which encouraged abuse and delayed decisions to aliens who merited relief from deportation. The pending caseload has been steadily reduced from 56,000 when the restructuring initiative was announced to approximately 32,000 by September 2004.
- The regulation expanded the existing streamlined procedures to resolve more cases with single Board Member decisions. Under the restructuring regulation, all cases are adjudicated by a single Board Member unless they fall into one of six specified categories, which are handled by a panel of three Board Members. A single Board Member decision can be quite detailed, while many three Board Member cases can be short and straightforward. Furthermore, the regulation mandates the use of summary affirmances (or affirmances without opinion (AWO) as they are also known) in certain instances. **Only about one-third of the Board's decisions fall into the category of AWO.**
- Federal courts have rejected every challenge brought against the restructuring regulation. Each circuit has issued a decision holding that the regulation is permissible and does not violate due process. In fact, most, if not all, of the courts where challenges were filed employ similar summary affirmance mechanisms in the interest of efficient, yet effective jurisprudence.

(more)

Appeals to the Federal Circuit Courts

- It is the rate of appeal (up from an historical 5 percent to close to 25 percent) that primarily accounts for the upsurge in petitions for review in the Federal circuit courts. For example, monthly petitions for review previously numbered about 125, but now range from 1,000 to 1,200 since the new procedures have taken effect. The Board's increased case completions account for a rise of about 200, and the remaining 800 to 1,000 new filings are due solely to the higher percentage of cases appealed.
- Following implementation of the new regulation, the increase in the rate of appeals from Board decisions was attributable, in large measure, to challenges to the restructuring regulation. However, new petitions for review have not dropped off despite the courts' rejection of challenges to the regulation. There is no evidence that the affirmance and reversal/remand rates of BIA decisions has changed significantly in the wake of the restructuring regulation. This indicates that the quality of the Board's jurisprudence has remained consistent and unaffected by its increased use of AWOs and single Board Member review as required by the regulation.
- A factor which may be contributing to the rise in the rate of appeals is the reduced time involved in completing cases appealed to the Board. Thus, for those aliens who wish to postpone deportation, filing an appeal to the circuit courts may be a much more attractive option than in the past. To the extent that the courts are routinely granting stays of deportation pending their review, the incentive to file an appeal and to request a stay will be high.
- Because only the alien, and not the Government, may appeal adverse decisions to the Federal courts, the courts never see cases where an alien has been granted relief.